

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Thursday, September 27, 2007 – 1:00 p.m. – Room W135 House Building

Members Present:

Mr. Kevin J. Worthen, Chair
Rep. Sheryl L. Allen
Rep. Ronda Rudd Menlove
Mr. Byron L. Harward
Mr. Michael Peterson
Mr. Robin L. Riggs
Mr. Roger Tew

Members Absent:

Judge Jon M. Memmott, Vice-Chair
Sen. Mike Dmitrich
Sen. Peter Knudson
President John L. Valentine
Rep. Ralph Becker
Ms. Kristine Strachan

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Amanda Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Worthen called the meeting to order at 1:23 p.m.

MOTION: Mr. Peterson moved to approve the minutes of the November 9, 2006 and the February 2, 2007 meetings. The motion passed unanimously.

2. Commission Vacancies

Chair Worthen announced that there are two open positions on the Commission due to the resignations of Chief Justice Christine Durham and Mr. Morris D. Linton. Chair Worthen told the Commission that materials concerning those who have applied for these positions have been distributed to himself, Mr. Tew, and Judge Memmott to review and then present their recommendations to the Commission. He introduced and welcomed Rep. Menlove, a new member of the Commission, and then asked for recommendations from the Commission for additional applicants for the Commission vacancies.

Mr. Harward recommended Mr. Ted Lewis, Chair Worthen recommended Mr. Kirk L. Jowers, and Mr. Howe stated that Mr. Lane Beattie and Mr. Michael Zimmerman both expressed interest in the position.

3. Constitutional Amendments Passed During the 2007 General Session

Mr. Rees explained 2007 General Session H.J.R. 4, "Resolution Revising Executive Officer Succession Provisions;" 2007 General Session S.J.R. 2, "Resolution Regarding Permanent State Trust Fund;" and 2007 General Session S.J.R. 12, "Resolution Amending Utah Constitution," which were provided to the Commission prior to the meeting.

Mr. Tew asked the Commission to recognize Mr. Karl N. Snow, a former state senator and chair of the Commission. Mr. Snow expressed his continued interest in the important work of the Constitutional Revision Commission.

4. Article VI, Section 1

Chair Worthen explained that Article VI, Section 1 vests legislative power within the State to the Senate, the House, and the people. He further noted that in order for the people to utilize their power they must do so through an initiative or, after the Legislature has already acted, through a referendum. Chair Worthen explained that the Gallivan decision ruled that the initiative statute requiring a certain percentage of the voters in 20 counties to approve the initiative in order for it to be placed on the ballot was unconstitutional. He commented that the Legislature then amended the statute to require that the requisite percentage of voters come from the 26 senate districts, in order for an initiative to be placed on the ballot. Chair Worthen pointed out that the Gallivan decision did not address how that ruling affected the provisions for placing a referendum on the ballot, since the referendum statute also requires the percentage of voters to be selected from counties instead of districts, which subsequently makes the referendum statute appear to also be unconstitutional.

Mr. Tew responded that the referendum issue seems to be a question of whether the statute is in conflict with the Constitution, which would be a legislative issue, not an issue of whether the Constitution needs to be changed.

Mr. Peterson stated his concern that the initiative and referendum responsibilities are provided in the Constitution, but the conditions for the initiative and referendum process are detailed in statute. He argued that both the bestowing of the power to use initiatives and referendums and the conditions for their use should be provided for in the Constitution. Mr. Peterson commented that he believes this is an appropriate constitutional issue for the Commission to consider.

The commission members debated whether the Commission should study these issues at a future meeting.

5. Article IX, Section 1

Mr. Worthen introduced Article IX, Section 1 as a topic for possible future discussion. He explained that this provision may or may not note a limitation as to when the Legislature can redistrict. Mr. Worthen remarked that the language in the article raises the question of whether the Legislature can only redistrict "at the session next following an enumeration," or whether the Legislature is allowed to redistrict at other unspecified times.

The Commission discussed this issue and debated whether it was a topic the Commission should undertake at a future meeting.

Mr. Worthen enumerated more possibilities for future topics for the Committee to discuss: namely, a presentation from the Attorney General's office concerning post conviction relief in death penalty cases, and the difference between the State Constitutional provision governing search and seizure and the 4th Amendment to the United States Constitution.

The Commission discussed these issues and whether it will explore these issues further at a future meeting. The Commission also discussed whether the above issues should be added to future agendas as topics of study.

Mr. Peterson asked Mr. Rees to provide language that would improve upon Article IX, Section 1 to make it more precise.

MOTION: Mr. Harward moved to place Article IX, Section 1 on the next meeting's agenda. The motion passed unanimously.

6. Article X, Sections 1 and 3

Mr. Rees explained Article X, Sections 1 and 3, and commented that the Commission has previously discussed changing the appointment of the State Superintendent of Public Instruction from the State Board of Education to the Governor.

Mr. Rees distributed and discussed "StateNotes: Governance, State Boards, Chiefs, Agencies," and "State Constitutional Provisions: Boards of Education, Chief Education Officers, and Their Relationship to the Legislature."

Mr. Tew emphasized the importance of looking at this issue in context. He explained that amendments to Article X were enacted in 1986 after extensive study by the Commission. Mr. Tew reiterated that this issue is not ambiguous, but if there are issues that have arisen then the Commission may want to reexamine the Education Article.

Mr. Harward asserted that Article X should be studied by the Commission as it would be beneficial to strengthen the language pertaining to the election of the State Board. He further argued that if the Constitution provides for a State Board it should provide for how the State Board is elected.

Rep. Allen requested that the Commission be provided with a review of the Education Article's history at a future meeting.

The Commission debated whether it should study Article X at a future meeting.

MOTION: Mr. Harward moved that the Commission act on the following: (1) to invite the Attorney General's Office to present the issues they want the Commission to consider at the next meeting, (2) to see a calender of the necessary steps to take before the redistricting after the 2010 census, (3) to contact the President and the Speaker to seek their direction on the issues they feel the Commission should consider, (4) to invite the state school board members, the Superintendent, and other organizations concerned with education to present on whether they believe there should be changes to the Constitution, and (5) to obtain a history of the methods since 1986 used to elect the State School Board. The motion passed unanimously.

After commission discussion, Mr. Worthen scheduled the next commission meeting for Thursday, October 11, 2007 at 1:00 p.m., Thursday, November 8, 2007 at 1:00 p.m., and every second Thursday of each month beginning April or May of next year.

7. Other Business / Adjourn

MOTION: Mr. Harward moved to adjourn the meeting. The motion passed unanimously. Chair Worthen adjourned the meeting at 2:36 p.m.